

Ordinance No. 121836

Council Bill No. 115291

AN ORDINANCE relating to Seattle Center; authorizing the sale and temporary leaseback of real property at 133 Warren Avenue North, commonly known as Seattle Center Parking Lot 5 ("Property"); providing for the deposit of sale proceeds; and, declaring the Property exempt from Resolution 29799.

CF No. _____

Date Introduced:	<u>JUN 13 2005</u>		
Date 1st Referred:	<u>JUN 13 2005</u>	To: (committee)	<u>Parks, Neighborhoods & Education</u>
Date Re - Referred:		To: (committee)	
Date Re - Referred:		To: (committee)	
Date of Final Passage:	<u>6-20-05</u>	Full Council Vote:	<u>8-0</u>
Date Presented to Mayor:	<u>6-20-05</u>	Date Approved:	<u>6/22/05</u>
Date Returned to City Clerk:	<u>6/22/05</u>	Date Published:	<u>4ppp</u>
Date Vetoes by Mayor:		Date Veto Published:	
Date Passed Over Veto:		Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: DELLA
[Signature]
Councilmember

Committee Action:

Motion: PS
2nd: JG
Y: 3 N: 0 DD
6-20-05 Passed 8-0 (Excused: Compton)

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review OMP Review City Clerk Review Electronic Copy Loaded Indexed

ORDINANCE 121836

AN ORDINANCE relating to Seattle Center; authorizing the sale and temporary leaseback of real property at 133 Warren Avenue North, commonly known as Seattle Center Parking Lot 5 ("Property"); providing for the deposit of sale proceeds; and, declaring the Property exempt from Resolution 29799.

WHEREAS, the Seattle Center Master Plan, adopted by City Council Resolution 28210 in 1990 and most recently amended by Council Resolution 30740 in February 2005, identifies the Lot 5 site as a small surface parking facility; and

WHEREAS, the City has determined with the advice of the Seattle Center Director that the current public use of the Property as a surface parking lot is no longer needed; that public purposes will be satisfied by private redevelopment consistent with the City's Comprehensive Plan and Queen Anne Plan; and that the site is not needed for Seattle Center's future program needs; and

WHEREAS, an addendum to the Seattle Center Master Plan EIS has been published and the review period completed regarding the sale of land in authorized public use and the removal of the Property as part of the Seattle Center campus; and

WHEREAS, the projected proceeds from the sale of the Property were budgeted in the Adopted 2005-06 City Budget for the Seattle Center Operating Fund; and,

WHEREAS, as a result of the City's competitive process, Warren Avenue Properties LLC ("Purchaser") entered into the Purchase & Sale Agreement attached hereto as Attachment 1, agreeing to pay a purchase price of \$890,000, subject to reasonable due diligence investigation of the property; and

WHEREAS, the Purchaser proposes to redevelop the property consistent with neighborhood commercial zoning (NC3-65), which use would further the objectives of the City's Comprehensive Plan and the Queen Anne Plan; and,

WHEREAS, the Purchaser has agreed to maintain the property in public parking, and may temporarily leaseback the site to Seattle Center to continue operation of a surface parking facility until such time as construction of their development commences; and,

WHEREAS, Seattle Center will need to undertake pre-closing and closing activities in support of the sale of the Property, including compensation of the broker and closing costs; and,



1 WHEREAS, the City intends that the cash proceeds from the sale of Lots 4 and 5 pay all costs of
2 the sales, including the broker's fee and all closing and related City costs associated with
3 the sale of the Property, and that the net proceeds of the sale be deposited in the Seattle
Center Operating Fund; NOW, THEREFORE,

4 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

5 Section 1. As requested by the Seattle Center Director ("Director") and recommended by
6 the Mayor, Seattle Center's property known as Lot 5 located at 133 Warren Avenue North
7 ("Property") is exempt from Resolution 29799 and the Seattle Center Director or her or his
8 designee is hereby authorized to sell the Property, as legally described in Exhibit A to
9 Attachment 1.
10

11 Section 2. The Director is authorized to sell the Property to Warren Avenue Properties
12 LLC ("Purchaser"), as provided in the Purchase and Sale Agreement ("P&SA") included as
13 Attachment 1 for a gross purchase price of EIGHT HUNDRED NINETY THOUSAND
14 DOLLARS (\$890,000), in all cash paid at closing.
15

16 Section 3. The Seattle Center Director or her designee is further authorized, for and on
17 behalf of the City, to execute a Bargain and Sale Deed substantially in the form included as
18 Exhibit D to Attachment 1 for recording and delivery upon Purchaser's compliance with the
19 conditions of the P&SA that are to be satisfied at or before closing, and such other agreements
20 and documents as she reasonably determines are appropriate to effect the closing of such
21 conveyance in accordance with the terms and conditions of the Purchase and Sale Agreement.
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2 Section 4. The Seattle Center Director, or her or his designee, is authorized, for and on
3 behalf of the City of Seattle, to enter into any agreement(s) to provide for continued public
4 parking use of the Property pending redevelopment of the Property by the Purchaser.

5 Section 5. To pay for City costs and commitments associated with sale of the Property, a
6 reimbursable appropriation has been made by separate ordinance from the Cumulative Reserve
7 Subfund -- Unrestricted Subaccount (Fund 11650) to the Lot 4 Site Development Project
8 (S9907). Any amount of the appropriation referenced in this Section 5 that is unencumbered and
9 unexpended within 120 days following the City's receipt of proceeds from the sale of the
10 Property shall lapse.
11

12 Section 6. The proceeds of the sale, upon receipt by the City, shall be deposited in the
13 Seattle Center Operating Fund (11410).
14

15 Section 7. Any acts pursuant to the authority and prior to the effective date of this
16 ordinance are hereby ratified and confirmed.
17

18 Section 8. This ordinance shall take effect and be in force thirty (30) days from and after
19 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
20 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
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2 Passed by the City Council the 20th day of June, 2005, and signed by me in open
3 session in authentication of its passage this 20th day of June, 2005.

4
5 
6 President _____ of the City Council

7 Approved by me this 22nd day of June, 2005.

8
9 
10 Gregory J. Nickels, Mayor

11 Filed by me this 22nd day of June, 2005.

12 
13 City Clerk

14 (Seal)

15 Attachment 1: PURCHASE AND SALE AGREEMENT – Lot 5 - 133 Warren Avenue North

16 Exhibits to Attachment 1:

17
18 EXHIBIT A -- Legal Description of Land

19 EXHIBIT B -- Site Map

20 EXHIBIT C -- List of Documents

21 EXHIBIT D -- Form of Bargain and Sale Deed

PURCHASE AND SALE AGREEMENT
FOR SALE OF REAL PROPERTY

THIS AGREEMENT is entered into as of May 16, 2005, between **THE CITY OF SEATTLE**, a first class city of the State of Washington ("Seller"), and **WARREN AVENUE PROPERTIES, LLC**, a Washington limited liability company ("Purchaser").

In consideration of the payment and receipt of the Purchase Price in exchange for the Property, and in reliance on the parties' mutual promises and undertakings and the mutual benefits to be derived from the promises contained in this Agreement, the parties agree as follows:

1. **PROPERTY AND INTERESTS.**

1.1 Seller owns the real property and improvements described on **Exhibit A** and depicted on the site map as **Exhibit B** (the "Property"), and Seller has determined with the advice of the Seattle Center Director that the current public use of the Property as a surface parking lot is no longer needed, and that the Property is not necessary for Seattle Center's future program needs. The term "Property" includes all existing appurtenant easements, development rights, permits, warranties, license and tangible property.

2. **SALE OF PROPERTY.**

2.1 Upon execution of this Agreement by the duly authorized representatives of Purchaser and Seller, and upon payment of the Purchase Price defined in Section 3.1, Seller shall convey the Property to Purchaser subject to: (a) all taxes, assessments, restrictions, easements, agreements and other matters affecting the Property deemed acceptable by Purchaser; and (b) all applicable zoning rules, restrictions, regulations, resolutions and ordinances and building restrictions and governmental regulations now or hereafter in effect. The parties recognize that this Agreement is subject to approval by the Seattle City Council.

3. **PURCHASE PRICE.**

3.1 Purchase Price. The total purchase price for the Property ("Purchase Price") is Eight Hundred Ninety Thousand and No/100 Dollars (\$890,000). The Purchase Price, less the Earnest Money and all accrued interest, shall be paid in cash at Closing.

3.2 Earnest Money. Within five (5) business days after full execution of this Agreement, Purchaser shall deliver to the downtown Seattle office of Chicago Title Insurance Company ("Title Company"), 701 5th Avenue, Suite 1800, or such other escrow agent as may be satisfactory to both Purchaser and Seller ("Escrow Agent"), an earnest money deposit (the "Earnest Money") in an amount equal to five percent of the Purchase Price, or Forty Four Thousand Five Hundred Dollars (\$44,500) by wire transfer or check, which sum shall be deposited in an interest bearing account and held until Closing and which sum (together with all accrued interest thereon) shall be applied to the Purchase Price at Closing, unless forfeited or refunded to Purchaser as provided in this Agreement.

4. **TITLE, SURVEY, AND INSPECTIONS; LEASES.**

4.1 Title. Closing shall be conditioned upon Title Company issuing or committing to issue to Purchaser, at Purchaser's election, a standard or extended coverage ALTA owner's policy of title insurance in the amount of the Purchase Price (the "Title Policy"). The Title Policy shall insure that title to the Property is free and clear of all encumbrances except those listed in the title commitment and not objected to by Purchaser, which exceptions shall be the "Permitted Exceptions". The lien for any current real property taxes not yet due and payable, and those matters excluded from coverage by the standard exceptions and exclusions contained in the form of title insurance policy required hereby are Permitted Exceptions. Title shall be conveyed by bargain and sale deed, subject only to the Permitted Exceptions. Within five (5) business days of executing this Agreement, Seller shall deliver a copy of the current title



to it actually taking place; provided that such approval shall not be unreasonably withheld. In general, all such investigations or studies occurring on the premises shall not interfere with Seller's use of the Property, shall be conducted in a manner consistent with best practices of the industry, and shall not expose any person to any condition potentially hazardous to that person's health. In the event that any accidental discharge or exposure of a hazardous condition should occur, Purchaser and its agents shall promptly take all steps reasonably calculated to minimize the effect of such exposure, and protect life, health and property and shall promptly notify Seller. Purchaser shall notify Seller of the results of any studies it conducts.

(ii) Any environmental study which Purchaser elects to undertake which requires invasive or destructive testing may be performed upon 5 business days' notice to Seller and upon proof of insurance adequate to the risk of damage or loss occurring during the testing to cover the cost of repair necessitated by such testing on the Property or any adjacent property owned by Seller.

(iii) Any invasive or destructive testing shall be conducted at an agreed time, and in a manner intended to minimize disruption to Seller's use of the Property. In the event that this Agreement terminates without Closing, Purchaser covenants and agrees to repair any damage to the Property occasioned by Purchaser's entry upon the Property or the conduct of any inspection, study or survey by or for Purchaser; provided however that Purchaser shall not be required to correct any conditions of the Property related to the presence of Hazardous Materials. Such repair shall be to the condition in which the Property existed immediately prior to Purchaser's initial entry upon the Property pursuant to the license granted herein. Purchaser shall indemnify and hold harmless Seller for any costs, loss or damage whatsoever incurred as a result of Purchaser's entry upon the Property and conduct of the inspection, study or survey.

4.2.3 Seller's Cooperation. Seller agrees that Seller and its employees will cooperate with Purchaser during Purchaser's investigation and survey and provide such access to the Property and such information about the Property as Purchaser shall reasonably require. In addition, Seller agrees that within five (5) business days after full execution of this Agreement, Seller shall provide to Purchaser a complete copy of the following to the extent they are in Seller's possession, custody or control: information relating to any proposal or commitment by Seller to alter existing improvements or structures or construct additional improvements or structures, or to dedicate any portion of the Property to any governmental entity; and all other reports, records, diagrams, photographs, maps or other Documents relating to the Property, as listed at **Exhibit C** attached hereto.

4.3 Purchaser shall indemnify and hold Seller harmless from any claims, costs (including attorney's fees), loss, liability and damage whatsoever incurred as a result of Purchaser's entry upon the Property and conduct of the inspection, study or survey or any other activity on the Property by or on behalf of Purchaser in connection with or pursuant to this Agreement. Any damages not repaired to Seller's satisfaction shall be assessed against the Earnest Money in the event the sale does not close. Notwithstanding the foregoing, and except as provided in Section 5.2.4, Purchaser's repair, defense and indemnification obligations under this Section shall not extend to the correction of any preexisting condition that Purchaser discovers to be present on, under or about the Property.

4.4 Seller Cooperation in Approvals Process. Seller agrees to reasonably cooperate with Purchaser in its pursuit of approvals from City of Seattle and other applicable authorities with jurisdiction over building and site improvement permitting and approvals, both pre-Closing and post-Closing, in connection with Purchaser's development project; provided, however, that Closing is specifically not contingent on City approval of a Master Use Permit or any other permits.

5. REPRESENTATIONS AND WARRANTIES.

5.1 Purchaser's Warranties. Purchaser represents and warrants as follows:

5.1.1 Purchaser is a Washington limited liability company duly organized, validly existing and in good standing under the laws of the State of Washington.



health, safety or welfare or any orders by any governmental agency or known insurance company requiring corrective action for any of the foregoing.

5.2.8 No representation or warranty by Seller contained in this Agreement or any exhibit hereto or in any document, statement, certificate, financial information, or schedule given to or to be given to Purchaser as a result of or in connection with this Agreement, knowingly contains or on Closing knowingly will contain, an untrue statement of material fact, or knowingly omits or on Closing will knowingly omit to state a material fact necessary to make the statements and facts contained therein not misleading. The Documents listed in Exhibit C are all of the documents relating to the Property in the possession of the Seattle Center Department or within its reasonable control.

5.2.9 Prior to Closing, Seller shall diligently manage and operate the Property and shall perform maintenance and replacements in accordance with customary schedules and perform repairs or replacements to any broken, defective or dysfunctioning portion of the Property as the relevant condition occurs, and otherwise operate and maintain the Property in a manner consistent with the manner in which Seller has previously maintained the Property; not violate or breach any zoning ordinance, fire code or building permit, nor commit any waste, damage, or nuisance; and promptly advise Purchaser of any litigation, arbitration, or administrative hearing affecting the Property.

5.2.10 Seller at Seller's expense shall continue to insure the Property against damage by fire or any other destructive forces in the amounts and coverages in place as of the date of mutual execution of this Agreement and Seller shall retain such insurance in full force and effect until Closing or any earlier termination of this Agreement. Seller has not received any notice from any insurance company of any defects or inadequacies in the Property or any part thereof which would adversely affect the insurability of the Property or the premiums for insurance thereof, and Seller is not aware of any such defects or inadequacies.

5.2.11 The representations and warranties made by Seller in this Agreement are true on and as of the date of Closing as though such representations and warranties had been made on and as of the date of Closing.

5.3 Purchaser's Understanding of the Property. Unless Purchaser terminates this Agreement in accordance with the terms hereof, Purchaser agrees that it will accept the Property "AS IS" at Closing. Purchaser acknowledges that:

- (i) The Property consists of approximately 7,200 square feet of area.
- (ii) Purchaser has reviewed the Phase 1 Environmental Report for the Property.
- (iii) Purchaser understands the current zoning of the Property.

6. PURCHASER'S CONDITIONS PRECEDENT TO CLOSING.

6.1. Purchaser shall be obligated to complete this transaction upon the following conditions:

6.1.1 Seller is able to convey title to the Property as described in Section 4, subject only to the Permitted Exceptions;

6.1.2 The Title Company is able to issue to Purchaser the Title Policy;

6.1.3 Within thirty (30) days after this Agreement is fully executed (the "Due Diligence Period"), Purchaser has determined in its sole discretion that the Property is acceptable to Purchaser. If Purchaser notifies Seller that it is satisfied with the Property or waives its due diligence by the end of the Due Diligence Period ("Successful Completion"), the Earnest Money shall become non-refundable unless Seller defaults under this Agreement. If Purchaser fails to notify Seller that it is satisfied with or waives its



9.2 Escrow Instructions. The provisions of this Agreement shall constitute the joint instructions of the parties to the Escrow Agent; provided, however, that the parties may provide additional instructions to the Escrow Agent, as mutually agreed and not inconsistent with the provisions of this Agreement.

9.3 Date of Closing. Closing of this transaction shall occur no later than ninety (90) days after the expiration of the Due Diligence Period, or no more than ten (10) days following City Approval, whichever is the earlier event to occur ("Closing"). Notwithstanding the foregoing, if City Approval (as defined in Section 6.1.5) does not occur on or before ninety (90) days after expiration of the Due Diligence Period then, at Purchaser's option and sole discretion this Agreement may be terminated by Purchaser, whereupon the Earnest Money together with all interest accrued thereon shall be returned to Purchaser within three (3) business days after delivery to Seller and Escrow Agent of Purchaser's notice of such termination.

9.4 Purchaser's Closing Obligations & Instruments. At Closing, Purchaser shall deliver to Seller through the Escrow Agent:

9.4.1 By certified or cashier's check or wire transfer, the Purchase Price, less the Earnest Money deposit and all interest earned thereon, adjusted and prorated as provided in this Agreement; and

9.4.2 Such other instruments as are reasonably necessary to consummate this purchase and sale transaction.

9.5 Seller's Closing Obligations & Instruments. At Closing, Seller shall deliver to Purchaser through the Escrow Agent:

9.5.1 A fully executed and acknowledged bargain and sale deed subject only to the Permitted Exceptions; and

9.5.2 Such other instruments as are reasonably necessary to consummate this purchase and sale transaction.

10. ESCROW AGENT'S OBLIGATIONS.

10.1 The Escrow Agent shall receive, hold and disburse all funds, arrange the execution, delivery and recording of all instruments necessary to this transaction and shall otherwise act in accordance with the mutual written instructions of the parties to this Agreement and in accordance with the laws of the State of Washington.

10.2 Earnest Money. The Earnest Money paid by Purchaser shall be held by Escrow Agent in a separate interest bearing account, identified to this transaction. The interest accruing thereon between the date of deposit and the date of Closing shall be applied to Purchaser's obligations at Closing, or if this Agreement is terminated prior to the date of Closing, such interest shall be returned to Purchaser together with the Earnest Money.

10.3 Escrow Agent shall record all documents necessary to transfer title and thereafter shall pay to Seller the Purchase Price, as adjusted and prorated for Seller's portion of costs of this transaction and after deduction of all applicable fees and taxes.

10.4 Proration and Expenses. Assessments, surface water management charges, conservation service charges, and utility charges constituting liens against the Property, all for the year of Closing, shall be prorated as of the date of Closing. Any documentary transfer tax, real estate excise tax, or other similar tax in accordance with the requirements of lawful authority shall be paid by Seller. Seller shall pay the premium for the issuance of a standard owner's title insurance policy to be issued to Purchaser at Closing, provided, however, that Purchaser shall pay the cost of extended (ALTA) coverage as well as any



14. BROKERS; INDEMNIFICATION.

14.1 Purchaser and Seller each warrant and represent that they will each be solely responsible for any and all commissions due their respective real estate broker, salesman, finder or similar intermediary in connection with the purchase of the Property, and each shall hold harmless, indemnify and defend the other from and against any claim based on any alleged fact inconsistent with such party's warranty and representation contained in this paragraph 14.1. Seller is represented by Metropolitan Partners. Purchaser represents that it has not been represented by any broker in connection with the purchase of the Property. This indemnification obligation shall survive the Closing and the termination of this Agreement.

15. ASSIGNMENT; BINDING EFFECT.

15.1 This Agreement may be assigned by Purchaser subject to approval by Seller which approval will not be unreasonably withheld. Notwithstanding the foregoing, Purchaser may assign this Agreement at Closing to any entity in which Purchaser has a 51% or greater ownership interest, without Seller's consent.

15.2 Subject to the foregoing, this Agreement shall be binding upon each party and its assigns and successors.

16. NOTICES.

16.1 All notices, requests, demands and other communications under this Agreement shall be in writing and shall either be delivered in person, sent via facsimile or sent by Federal Express or by registered or certified mail through the U.S. Postal Service with postage prepaid as follows:

SELLER:

The City of Seattle
Neal Erickson
Seattle Center Redevelopment Division
Center House, Room 109
305 Harrison Street
Seattle, Washington 98109

PURCHASER:

Warren Avenue Properties LLC
115 Warren Avenue
Seattle, Washington 98109
Attn: Jeff Brotman, Manager

With a copy to:

Maria Barrientos
Barrientos LLC
2003 Western Avenue, Suite 300
Seattle, Washington 98121

AND

George Martin
Hillis Clark Martin and Peterson
500 Galland Building
1221 Second Avenue
Seattle, Washington 98101-2925



20.2 No writing other than a document signed by Seller's Seattle Center Department Director specifically so stating that it is a waiver shall constitute a waiver by Seller of any particular breach or default by Purchaser, nor shall such a writing waive Purchaser's failure to fully comply with any other term or condition of this Agreement, irrespective of any knowledge that any officer or employee of Seller may have of such breach, default, or noncompliance.

21. ENTIRE AGREEMENT; MODIFICATIONS; NEGOTIATED UNDERSTANDING.

21.1 This Agreement, including all exhibits (which by this reference are incorporated herein), represents the entire agreement of the parties with respect to the Property and any and all agreements, oral or written, entered into prior to the date hereof are revoked and superseded by this Agreement.

21.2 This Agreement may not be changed, modified or rescinded except in writing signed by both parties and any attempt at oral modification of this Agreement shall be of no effect.

21.3 The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

22. DEFINITIONS.

For the purposes of this Agreement, the following terms and phrases are defined as specified below:

22.1 "Document" means and includes information stored in any form; any written, recorded or graphic matter, however produced or reproduced; and copies and drafts thereof. Without limiting the foregoing, "Document" includes correspondence; telegrams; memoranda; reports; notes; drafts; minutes; contracts; agreements; books; records; vouchers; invoices; diaries; calendar notes; logs; computer print-outs; e-mails; voice mails; memory programs; information stored in any data processing or word processing system, in whatever form; back-up materials of any kind; card files; press clippings; newspapers or newsletters; sworn or unsworn statements of employees; lists; audits; tables of organization; monthly or other periodic statements; journals; notices; affidavits; court papers; appointment books; minutes or records of conferences or telephone calls; brochures; written reports or opinions of investigators or experts; status reports; drawings; charts; photographs; negatives; or tape recordings.

22.2 "Environmental Report" means and includes but is not limited to any document relating to the physical condition of the Property or such adjacent property or the presence on the Property or such adjacent property of any Hazardous Materials, as that term is defined in Section 22.3.

22.3 "Hazardous Materials" means and includes any hazardous or toxic substance or container therefor that is or becomes regulated by any governmental authority and includes, without limitation, underground storage tanks and any substance that is:

(i) Defined as a "Hazardous Substance" "Hazardous Waste," or "Extremely Hazardous Substance" pursuant to any provision of the United States Code, including United States Code sections commonly known as the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act or the Superfund Amendments and Reauthorization Act of 1986;

(ii) Defined as a hazardous substance or material pursuant to any state or local law, ordinance or regulation governing the Property, including without limitation, the Washington State Model Toxics Control Act (Chapter 70.105D RCW);

(iii) A petroleum or a petroleum by-product;

(iv) An asbestos or asbestos containing material;

(v) A pesticide;

(vi) A polychlorinated biphenyl;



SELLER:

THE CITY OF SEATTLE

By: Virginia Anderson
Virginia Anderson,
Director of Seattle Center Department

PURCHASER:

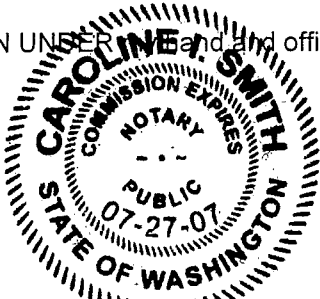
WARREN AVENUE PROPERTIES LLC

By: Jeffrey H. Brotman
Jeffrey H. Brotman,
Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 16th day of May, 2005, before me personally appeared Virginia Anderson, to me known to be the Director of Seattle Center Department of the City of Seattle, who executed the foregoing agreement, and acknowledged the same to be the free and voluntary act and deed of the City of Seattle for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said agreement.

GIVEN UNDER my hand and official seal the day and year written above in this certificate.



Signature: Caroline Smith
Printed name: Caroline Smith
Notary Public in and for the State of Washington,
residing at: Seattle, King County
My appointment expires: 7-27-07

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 13 day of May, 2005, before me personally appeared Jeffrey H. Brotman, to me known to be the Manager of Warren Avenue Properties, LLC, the limited liability company that executed the foregoing document, and acknowledged the same to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute such document for and on behalf of said company.

GIVEN UNDER my hand and official seal the day and year written above in this certificate.

Signature: V.A. Hilkemeier
Printed name: V.A. HILKEMEIER
Notary Public in and for the State of Washington,
residing at: Redmond
My appointment expires: 7-9-05



EXHIBIT B
Site Map

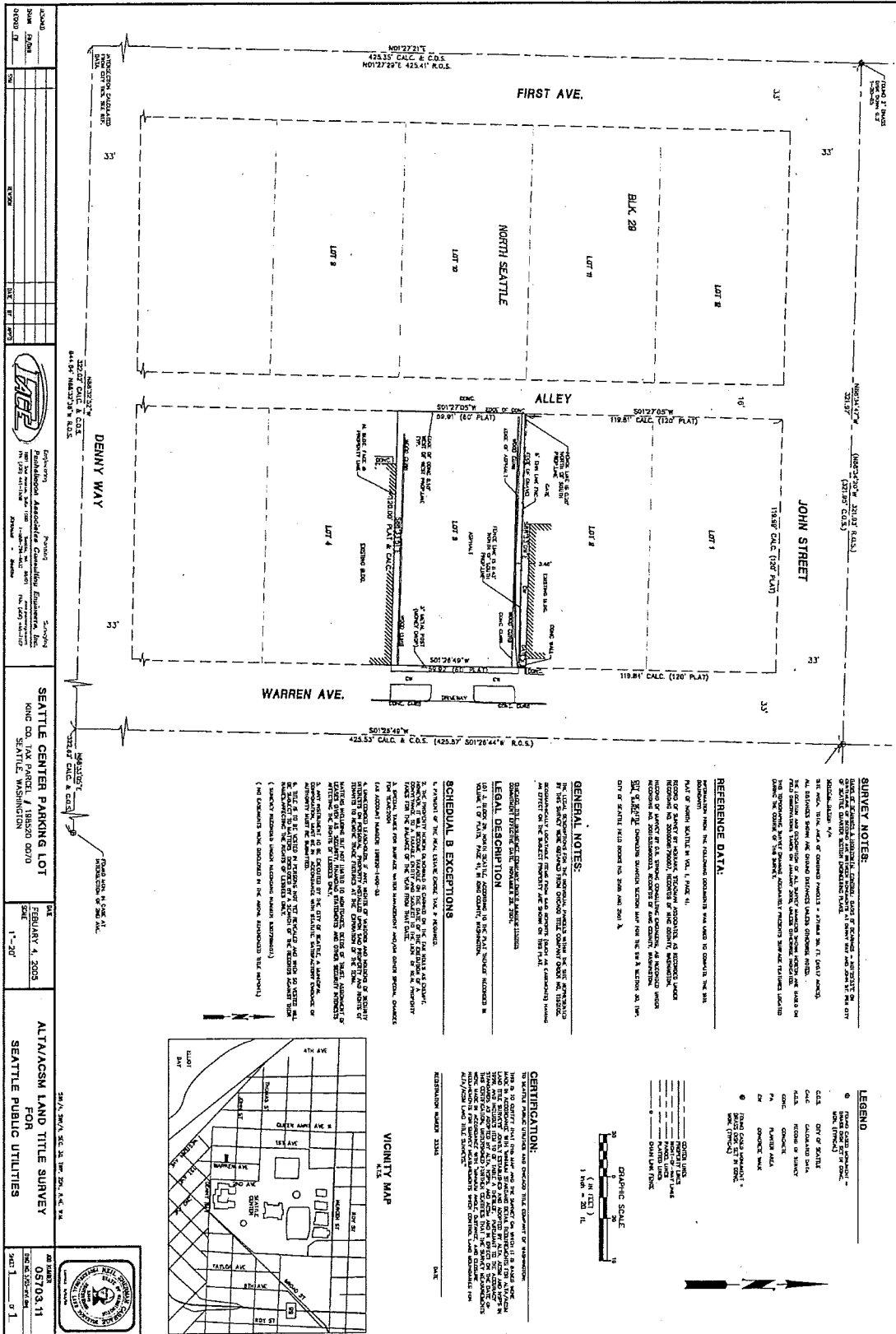


EXHIBIT D

FORM OF BARGAIN AND SALE DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the City of Seattle, a Washington municipal corporation ("Grantor"), does hereby grant, bargain, sell and convey to WARREN AVENUE PROPERTIES, LLC, a Washington limited liability company ("Grantee"), that real property situate in the County of King, State of Washington, and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), subject only to the exceptions to title described on Exhibit B attached hereto and incorporated herein by reference.

Together with all tenements, hereditaments and appurtenances thereto belonging or appertaining and any and all reversions, remainders, rents, issues and profits thereof.

Dated this _____ day of _____, 200__.

SELLER:

The City of Seattle
a Washington municipal corporation

By: _____

Its: _____

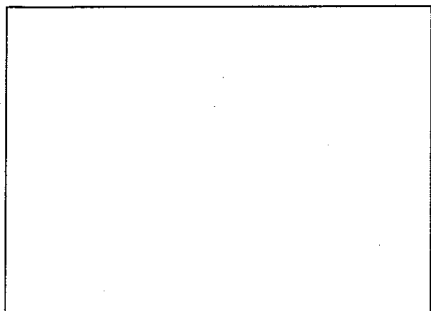
STATE OF WASHINGTON

)
) ss.
)

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of The City of Seattle. A Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public

Print Name _____

My commission expires _____



FISCAL NOTE FOR CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Center	Joan Rosenstock, 684-8541 Shelly Yapp, 615-1729 Ned Dunn, 684-7212 Helaine Honig, Law, 684-8222	Eve Sternberg, 386-1119

Legislation Title: *NOTE: Fiscal Note covers two related ordinances*

AN ORDINANCE relating to Seattle Center; authorizing the sale and temporary leaseback of real property at the southwest corner of 2nd Avenue North and John St, commonly known as Seattle Center Parking Lot 4 ("Property"); providing for the deposit of sale proceeds; and making a reimbursable appropriation to pay for sale-related costs; and, declaring the Property exempt from Resolution 29799.

AN ORDINANCE relating to Seattle Center; authorizing the sale and temporary leaseback of real property at 133 Warren Avenue North, commonly known as Seattle Center Parking Lot 5 ("Property"); providing for the deposit of sale proceeds; and, declaring the Property exempt from Resolution 29799.

Summary of the Legislation:

There are two proposed ordinances encompassed by this Fiscal Note. One proposed ordinance authorizes the Seattle Center Director to sell Seattle Center Parking Lot #4, at the southwest corner of 2nd Avenue North and John Street, in accordance with a negotiated Purchase and Sales Agreement for consideration of \$6.7 million. The second piece of legislation authorizes the Seattle Center Director to sell Seattle Center Parking Lot #5, at 133 Warren Avenue North, in accordance with a negotiated Purchase and Sales Agreement for consideration of \$890,000. The land sales are planned to close in August 2005.

Sale of these peripheral parking lots was contemplated as part of the Adopted 2005-06 Budget and projected net proceeds from the sale of the lots was included in adopted revenues to the Seattle Center Operating Fund. Both properties have been determined not to be necessary for Seattle Center's program needs or parking capacity. The legislation declares the properties to be exempt from Resolution 29799 because, due to existing policy regarding the sales reflected in the 2005-06 Adopted Budget, the properties were not offered to other City departments prior to being offered for sale to the public. That said, however, the proposed sale conforms to the intent of Resolution 29799 in that a careful determination was made that the properties were surplus to Seattle Center's program needs and could best serve the interests of the Center and



the City through sale of the property for purposes that would further the City's Comprehensive Plan and the Queen Anne Neighborhood Plan and Uptown Urban Center objectives and for compensation that would enhance Seattle Center's financial position.

The properties will remain in use as public parking lots until redevelopment occurs. The legislation authorizes the Seattle Center Director to enter into leaseback agreements, if the Purchasers elect to have the Center continue to operate the lots temporarily. In the case of Lot 4, we have enclosed a lease agreement which would be finalized following due diligence, including their due diligence on competitive parking management agreements.

Finally, the legislation authorizes a reimbursable appropriation from the Cumulative Reserve Subfund to pay the costs of the sale of Lots 4 and 5, subject to close of the Lot 4 sale, and provides for the deposit of net proceeds of the sale of Lots 4 and 5 to the Seattle Center Operating Fund.

Background: *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable)*

1. Site Background and Developer Selection

Seattle Center Parking Lots 4 and 5, 36,000 square feet and 7,200 square feet respectively, are properties owned by Seattle Center but not contiguous to the campus. Lot 4 is across the street from the back of the Pacific Science Center and Lot 5 is a block further west and in the mid-block of a street predominantly in multi-family housing. Both lots are used for public parking – 105 spaces in Lot 4 and 28 spaces in Lot 5.

The Center began efforts to engage a private entity to redevelop Lot 4 in 1999, when the Council authorized lease of the site for development of a hotel (Resolution 30004). Council approved an update to the Seattle Center Master Plan in 1990 (Resolution 28210) which envisioned a hotel development on the Lot 4 site. When the selected developer was unable to secure financing, the lease was terminated. Seattle Center sought to engage another hotel developer in 2002, but the economy was not ripe for hotel development and financing was not available for a deal satisfactory to the Center. In late 2003, Seattle Center issued an RFP for developer proposals for Lot 4. This time, developers were asked to propose a development, the structure of an agreement, and financial terms. While there were again a couple of hotel proposals, the most attractive proposals were from developers proposing mixed-use residential/commercial. Following screening of proposals and interviews, a preferred developer was selected and Seattle Center initiated negotiations for a sale of the property in early 2004. Due to personal health and financial circumstances, the developers were unable to carry-through with the sales negotiations, and they were terminated in summer 2004.

In the context of 2004 financial sustainability planning efforts, both Lot 4 and Lot 5 were identified as non-essential to the program requirements of Seattle Center, particularly given their off-campus location. Seattle Center also determined that the properties were not essential for



public parking to serve Seattle Center events. Without these lots (133 parking stalls) and with a projected reduction of 207 parking stalls in Lot 2 (5th Avenue Parking), there are only eight (8) days a year, based on 2003-04 data, that Seattle Center would be unable to fully meet its parking demand from its own parking facilities. And, Seattle Center parking facilities represent an estimated one-third of the parking capacity in the vicinity of the campus, with an additional one-third in privately owned public parking lots and one-third in on-street parking. Proceeds from the planned sale of both properties in the amount of \$6.4 million were incorporated as revenue to the Seattle Center Operating Fund in the Adopted 2005-06 City Budget.

In late 2004, Seattle Center selected, through a competitive process, a real estate broker – Metropolitan Partners -- to market the two sites for sale. Through the broker's networking and through public advertisements, the offering brochures were widely circulated in early 2005 with proposals due in February 2005. The broker received thirteen (13) proposals to purchase Lot 4 and three (3) proposals to purchase the much smaller Lot 5. Following review and evaluation of the proposals, Purchase and Sales Agreements were negotiated with IS Investment Properties LLC – Intracorp – for Lot 4 for consideration of \$6.7 million and with Warren Avenue Properties LLC – an entity of the property owner adjacent to Lot 5 – for Lot 5 for consideration of \$890,000. Both offers were the highest among the developers proposing and both demonstrated the financial capability and willingness to close the sale before entitlements in summer 2005.

2. Redevelopment of Properties

Both Lots 4 and 5 are in NC3-65 zones in the Uptown Neighborhood and in an area where housing development – condos and apartments – has intensified in the last few years. While both Purchasers have indicated their intentions to develop housing on the sites, closing will occur prior to the entitlement process and the sales are not contingent on any specific features of the developments. Both developments will be subject to SEPA review as part of the MUP process and both will go through the Queen Anne Design Review Board.

In the case of Lot 4, Seattle Center proposes to sell approximately 36,000 sq ft of land at the southwest corner of 2nd Avenue North and John Street. It is bisected by an alley with approximately 28,800 sq ft of contiguous property on the east side of the alley and a 7,200 sq ft parcel west of the alley, at the corner of John Street and Warren Avenue North. The Seattle Center would sell the property to Intracorp, which intends to construct approximately 130-150 residential condominiums and approximately 13,000 sq ft of commercial use. Approximately 2 1/2 levels of underground parking with access off the alley is proposed. No additional information is available for the development site improvements as they are in the conceptual stages of design. When plans reach the stage where environmental analysis can occur, the purchaser is responsible for all permitting and environmental review required for construction of those improvements on their newly purchased site with the City of Seattle as lead agency.

In the case of Lot 5, Seattle Center proposes to sell approximately 7,200 sq ft of land located at 133 Warren Avenue N. to Warren Avenue Properties LLC, which also hold the adjacent lot. It

is expected that Lot 5 and the adjacent lot may be combined and developed as housing with neighborhood commercial use consistent with land-use requirements. However, there is no information currently available for the development site improvements, as conceptual stages of design have not yet begun. When plans reach the stage where environmental analysis can occur, the purchaser is responsible for all permitting and environmental review required for construction of those improvements on their newly purchased site with the City of Seattle as lead agency.

Redevelopment of these sites for multi-family residential and mixed commercial use furthers growth objectives of the City's Comp Plan and the Uptown Urban Center.

Until such time as the properties are under active redevelopment, they will both remain in use as public parking facilities. The legislation authorizes the Seattle Center Director to enter into agreements whereby Seattle Center would continue to operate the lots, but the purchasers will have the option to contract with a private operator if they prefer to do so. Under the terms of the proposed temporary leaseback of the property for use as an interim parking facility, Seattle Center would retain 30 percent of gross proceeds from the parking lot, and remit 70 percent of the proceeds to the purchaser. Seattle Center estimates that this revenue split will more than offset Seattle Center costs for continuing to operating one or both of these lots.

Use of Sale Proceeds

The estimated cost of the sales of Lots 4 and 5 is a combined \$241,000; the Lot 4 legislation appropriates this amount, subject to close of the sales, as a reimbursable appropriation from the Cumulative Reserve Subfund -- Unrestricted Subaccount (Fund 11650) to the Lot 4 Site Development Project (\$9907), an existing Seattle Center CIP project. Upon closing, sale proceeds will first reimburse the CRF, with net proceeds over costs deposited to the Seattle Center Operating Fund. Use of any net proceeds in excess of revenues budgeted in the Adopted 2005-06 Budget shall be reviewed and recommended in the 2006 budget. Table 1 below reflects use of the sales proceeds:

Table 1 – Lot 4 and 5 Sale – Use of Proceeds

\$6,700,000	Purchase Price for Lot 4
\$890,000	Purchase Price for Lot 5
\$7,590,000	TOTAL PROCEEDS
	Costs of Sale
(\$185,000)	Real estate Broker's Fee
(\$12,000)	Environmental/SEPA review
(\$45,000)	Real Estate, Closing, and Project Management Costs
(\$241,000)	TOTAL COSTS OF SALE

\$7,349,000 NET SALE PROCEEDS – LOTS 4 AND 5

In incorporating the sale of Lots 4 and 5 into the Adopted 2005-06 Budget, the Center anticipated loss of approximately \$100,000 in parking revenues from these two sites, assuming that a portion of the business will be captured by other Seattle Center parking facilities.

3. Schedule

The P&SAs have been signed by all parties, subject to approval by the City Council. Due Diligence has been completed and the City's Environmental Review of the sale of property in public use and changes to the Seattle Center Master Plan has been completed. Closing on both Lots 4 and 5 is scheduled to occur no later than ninety (90) days after the expiration of the Due Diligence Period ("Closing"), or no more than ten (10) days following City Approval, whichever is the earlier event to occur. We project Closing to occur during August under this provision from the P&SA.

- Please check one of the following:

☐ **This legislation creates, funds, or anticipates a new CIP Project.**

☐ **This legislation does not have any financial implications.**

☒ **This legislation has financial implications.** (Please complete all relevant sections that follow.)

Appropriations: This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2005 Appropriation	2006 Anticipated Appropriation
Cumulative Reserve Subfund – Unrestricted Subaccount (11650)	Seattle Center – Capital Improvement Program	Lot 4 Site Development Project (S9907)	\$241,000	\$0
TOTAL			\$241,000	\$0

**See budget book to obtain the appropriate Budget Control Level for your department.*

Notes: This is a reimbursable appropriation from the Cumulative Reserve Subfund -- Unrestricted Subaccount for costs of the sale and will be reimbursed from the proceeds of the sale following Closing. The appropriation is contingent upon close of the Lot 4 sale.

Anticipated Revenue/Reimbursement: Resulting From This Legislation: *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2005 Revenue	2006 Revenue
Cumulative Reserve Subfund --Unrestricted Subaccount (Fund 11650)	Seattle Center	Proceeds of Property Sale	\$241,000	
Seattle Center Operating Fund (11410)	Seattle Center	Proceeds of Property Sale	\$7,349,000	
TOTAL			\$7,590,000	

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE

Impact: This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Position Title and Department*	Fund Name	Fund Number	Part-Time/ Full Time	2005 Positions	2005 FTE	2006 Positions**	2006 FTE**
None							
TOTAL							

- List each position separately

** 2006 positions and FTE are total 2006 position changes resulting from this legislation, not incremental changes. Therefore, under 2006, please be sure to include any continuing positions from 2005

Notes:

None.

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

Failure to approve the legislation would result in voiding the proposed Purchase and Sale Agreements for Lots 4 and 5. The City would lose the net proceeds projected from the sale, resulting in a \$6.4 million increase to Seattle Center's operating budget deficit.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** (Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)

Short of an appropriation of General Fund equal to the net sales proceeds from sale of the two parking lots, there are not readily available alternatives that would enable Seattle Center to meet the revenue targets assumed in the 2005-06 Adopted Budget. Without meeting the revenue targets for the property sales, Seattle Center's 2005 finances would end in a deficit and add to the accumulated operating deficit.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No.

- **Other Issues** *(including long-term implications of the legislation):*

None

Please list attachments to the fiscal note below:

Attachment 1: Site Maps – Lot 4 and Lot 5



Lot 4



Lot 5





City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

May 24, 2005

Honorable Jan Drago
President
Seattle City Council
City Hall, 2nd Floor

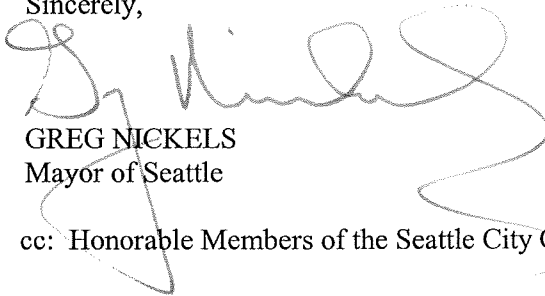
Dear Council President Drago:

I am pleased to transmit two proposed Council Bills authorizing the sales of Seattle Center Parking Lots 4 and 5, as contemplated in the City's 2005 Adopted Budget. While these two proposed property sales were managed together, they involve two different purchasers, so there are two separate Council Bills, each authorizing a Purchase and Sale Agreement, one for Lot 4 and one for Lot 5. The legislative packets share the same fiscal note and cover letter.

Parking Lots 4 and 5 are owned by Seattle Center, but are not contiguous to the campus. Lot 4 is a 36,000 square foot, 105 stall surface parking lot one block west of the Pacific Science Center. Lot 4 is a 7,200 square foot, 28 stall surface parking lot one block further to the west. Both properties have been determined not to be necessary for Seattle Center's program needs or parking capacity. Sale of these peripheral parking lots was contemplated in the 2005-6 Adopted Budget, as part of Seattle Center financial sustainability plans, with projected net sale proceeds of \$6.4 million included among the adopted revenues to the Seattle Center Operating Fund. Seattle Center, through a real estate broker, solicited and received multiple proposals for each property, and the final, negotiated purchase prices, \$6.7 million for Lot 4 and \$890,000 for Lot 5, came in above target in both cases. Costs of sale are estimated at \$241,000. The Lot 4 sale legislation includes an appropriation from the Cumulative Reserve Fund, to be reimbursed with sale proceeds, to cover the costs of sale for both Lots 4 and 5. Use of net proceeds in excess of budgeted revenues will be reviewed and recommended in the 2006 Budget.

Both sites are expected to be developed for multi-family residential and mixed commercial use. This redevelopment of surface parking lots furthers the growth objectives of the City's Comprehensive Plan and the Uptown Urban Center. In addition, the sales of these properties are key to achieving the adopted revenue totals in Seattle Center's 2005-6 budget. Thank you for your consideration of this legislation. Should you have questions, please contact Shelly Yapp at 615-1729.

Sincerely,



GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, E:mail: mayors.office@seattle.gov

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--SS.

187238
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

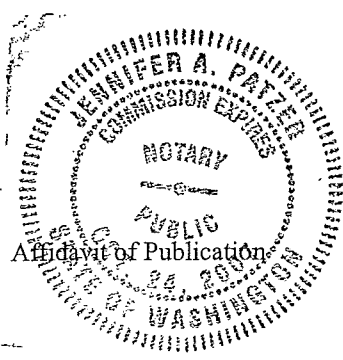
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

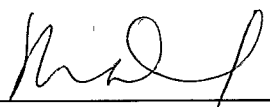
CT:121835 & 121836

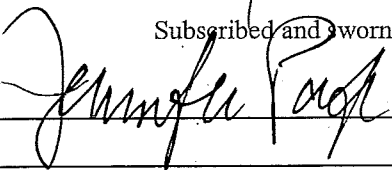
was published on

06/27/05

The amount of the fee charged for the foregoing publication is the sum of \$ 46.38, which amount has been paid in full.





Subscribed and sworn to before me on
06/27/05 

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on June 20, 2005, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 121835

AN ORDINANCE relating to Seattle Center; authorizing the sale and temporary leaseback of real property at the southwest corner of 2nd Avenue North and John St, commonly known as Seattle Center Parking Lot 4 ("Property"); providing for the deposit of sale proceeds; and making a reimbursable appropriation to pay for sale-related costs; and, declaring the Property exempt from Resolution 29799.

ORDINANCE NO. 121836

AN ORDINANCE relating to Seattle Center; authorizing the sale and temporary leaseback of real property at 133 Warren Avenue North, commonly known as Seattle Center Parking Lot 5 ("Property"); providing for the deposit of sale proceeds; and, declaring the Property exempt from Resolution 29799.

Publication ordered by JUDITH PIPPIN,
City Clerk.

Date of publication in the Seattle Daily
Journal of Commerce, June 27, 2005.

6/27(187238)